

Department of Justice

§ 65.1

(v) Investigators employed by the U.S. Office of Personnel Management;

(w) Attorneys, accountants, investigators and other employees of the U.S. Securities and Exchange Commission assigned to perform or to assist in performing investigative, inspection or other law enforcement functions;

(x) Employees of the Social Security Administration assigned to Administration field offices, hearing offices and field assessment offices;

(y) Officers and employees of the Tennessee Valley Authority authorized by the Tennessee Valley Authority Board of Directors to carry firearms in the performance of investigative, inspection, protective or law enforcement functions;

(z) Officers and employees of the Federal Aviation Administration, the Federal Highway Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration and the Saint Lawrence Seaway Development Corporation of the U.S. Department of Transportation who are assigned to perform or assist in performing investigative, inspection or law enforcement functions;

(aa) Federal administrative law judges appointed pursuant to 5 U.S.C. 3105; and

(bb) Employees of the Office of Workers' Compensation Programs of the Department of Labor who adjudicate and administer claims under the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act and its extension, or the Black Lung Benefits Act.

[Order No. 1874-94, 59 FR 25816, May 18, 1994]

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Subpart A—Eligible Applicants

Sec.

65.1 General.

65.2 State Government.

Subpart B—Allocation of Funds and Other Assistance

65.10 Fund availability.

65.11 Limitations on fund and other assistance use.

65.12 Other assistance.

Subpart C—Purpose of Emergency Federal Law Enforcement Assistance

65.20 General.

65.21 Purpose of assistance.

65.22 Exclusions.

Subpart D—Application for Assistance

65.30 General.

65.31 Application content.

Subpart E—Submission and Review of Applications

65.40 General.

65.41 Review of State applications.

Subpart F—Additional Requirements

65.50 General.

65.51 Recordkeeping.

65.52 Civil rights.

65.53 Confidentiality of information.

Subpart G—Repayment of Funds

65.60 Repayment of funds.

Subpart H—Definitions

65.70 Definitions.

Subpart I—Immigration Emergency Fund

65.80 General.

65.81 General definitions.

65.82 Procedure for requesting a Presidential determination of an immigration emergency.

65.83 Assistance required by the Attorney General.

65.84 Procedures for the Attorney General seeking State or local assistance.

65.85 Procedures for State or local governments applying for funding.

AUTHORITY: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98-473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102-140, 105 Stat. 832.

SOURCE: 50 FR 51340, Dec. 16, 1985, unless otherwise noted.

Subpart A—Eligible Applicants

§ 65.1 General.

This subject describes who may apply for emergency Federal law enforcement assistance under the Justice Assistance Act of 1984.

§ 65.2 State Government.

In the event that a law enforcement emergency exists throughout a state or part of a state, a state (on behalf of itself or a local unit of government) may submit an application to the Attorney General, for emergency Federal law enforcement assistance. This application is to be submitted by the chief executive officer of the state, in writing, on Standard Form 424, and in accordance with these regulations.

Subpart B—Allocation of Funds and Other Assistance

§ 65.10 Fund availability.

For the previous fiscal year (FY '85), \$800,000 was appropriated for emergency Federal law enforcement assistance for the entire country. In FY '86, \$1.5 million has been requested. The FY '86 request has not yet been appropriated and is not currently available. The form and extent of assistance provided will be determined by the nature and scope of the emergency presented; but, in any event, no fund award may exceed the amount ultimately appropriated.

§ 65.11 Limitations on fund and other assistance use.

(a) *Land acquisition.* No funds shall be used for the purpose of land acquisition.

(b) *Non-supplantation.* No funds shall be used to supplant state or local funds that would otherwise be made available for such purposes.

(c) *Civil justice.* No funds or other assistance shall be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(d) *Federal law enforcement personnel.* Nothing in the enabling legislation authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law. (section 6090(a), of the Act).

(e) *Direction, supervision, control.* Nothing in the enabling legislation

shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance. (section 6090(b), of the Act).

§ 65.12 Other assistance.

In accordance with the purposes and limitations of this subdivision, members of the Federal law enforcement community may provide needed assistance in the form of equipment, training, intelligence information, and personnel. The application may include requests for assistance of this nature.

Subpart C—Purpose of Emergency Federal Law Enforcement Assistance

§ 65.20 General.

The purpose of the Act is to assist state and/or local units of government which are experiencing law enforcement emergencies to respond to those emergencies through the provision of Federal law enforcement assistance. The authority and responsibility for implementation of this section is vested in the Attorney General of the United States.

§ 65.21 Purpose of assistance.

The purpose of emergency Federal law enforcement assistance is to provide necessary assistance to (and through) a state government to provide an adequate response to an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law.

§ 65.22 Exclusions.

Excluded from the situations for which this assistance is intended are:

(a) The perceived need for planning or other activities related to crowd control for general public safety projects; and,

(b) A situation requiring the enforcement of laws associated with scheduled

public events, including political conventions and sports events.

Subpart D—Application for Assistance

§ 65.30 General.

The Act requires that applications be submitted in writing, by the chief executive officer of a state, on Standard Form 424, in accordance with these regulations.

§ 65.31 Application content.

The Act identifies six factors which the Attorney General will consider in approving or disapproving an application, and includes administrative requirements to ensure appropriate use of Federal assistance. Therefore, each application must be in writing and must include the following:

(a) *Problem.* A description of the nature and extent of the law enforcement emergency, including the specific identification and description of the political and geographical subdivision(s) wherein the emergency exists;

(b) *Cause.* A description of the situation or extraordinary circumstances which produced such emergency;

(c) *Resources.* A description of the state and local criminal justice resources available to address the emergency, and a discussion of why and to what degree they are insufficient;

(d) *Assistance requested.* A specific statement of the funds, equipment, training, intelligence information, or personnel requested, and a description of their intended use;

(e) *Other assistance.* The identification of any other assistance the state or appropriate unit of government has received, or could receive, under any provision of the Act; and,

(f) *Other requirements.* Assurance of compliance with other requirements of the Act, detailed in other parts of these regulations, including: Nonsupplantation; nondiscrimination; confidentiality of information; prohibition against land acquisition; recordkeeping and audit; limitation on civil justice matters.

Subpart E—Submission and Review of Applications

§ 65.40 General.

This subpart describes the process and criteria for the Attorney General's review and approval or disapproval of state applications. The original application, on Standard Form 424, signed by the chief executive officer of the state should be submitted directly to the Attorney General, U.S. Department of Justice, Washington, DC 20530. One copy of the application should be sent to the Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

§ 65.41 Review of State applications.

(a) *Review criteria.* The Act provides the basis for review and approval or disapproval of state applications. Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider:

(1) The nature and extent of such emergency throughout a state or in any part of a state;

(2) The situation or extraordinary circumstances which produced such emergency;

(3) The availability of state and local criminal justice resources to resolve the problem;

(4) The cost associated with the increased Federal presence;

(5) The need to avoid unnecessary Federal involvement and intervention in matters primarily of state and local concern; and,

(6) Any assistance which the state or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

(b) *Review process.* (1) The Attorney General shall consult with the Assistant Attorney General, Office of Justice Programs, and the Director, Bureau of Justice Assistance, on requests for grant assistance.

§ 65.50

(2) All requests for assistance of the Federal law enforcement community (e.g., equipment, training, information, or personnel) shall be reviewed by the Attorney General in consultation with appropriate members of the Federal law enforcement community, including the United States Attorney(s) in the affected District(s). Such requests will be subject to statutory restrictions, including section 6090 on Federal agency activities.

(3) The Attorney General will approve or disapprove each application, submitted in accordance with these regulations, no later than ten (10) days after receipt.

Subpart F—Additional Requirements

§ 65.50 General.

This subpart sets forth additional requirements under the Justice Assistance Act. Applicants for assistance must assure compliance with each of these requirements.

§ 65.51 Recordkeeping.

(a) The state must assure that it adheres to the recordkeeping requirements enumerated in OMB Circulars, Number A-102 and Number A-128. This requirement extends to participating units of local government, in that they are viewed as the state's subgrantees.

(b) The Attorney General and the Comptroller of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this subdivision which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

§ 65.52 Civil rights.

The Act provides that "no person in any state shall on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title." Recipients of funds under the Act are also subject to the provi-

28 CFR Ch. I (7-1-99 Edition)

sions of title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR part 42, subparts C, D, E, and G.

§ 65.53 Confidentiality of information.

Section 812 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as amended and implemented by 28 CFR part 20) shall apply with respect to information, including criminal history information and criminal intelligence systems operating with the support of Federal law enforcement assistance.

Subpart G—Repayment of Funds

§ 65.60 Repayment of funds.

(a) If Federal law enforcement assistance provided under this subdivision is used by the recipient of such assistance in violation of these regulations, or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) The Attorney General may bring a civil action in an appropriate United States District Court to recover any amount authorized to be repaid under law.

Subpart H—Definitions

§ 65.70 Definitions.

(a) *Law enforcement emergency.* The term *law enforcement emergency* is defined by the Act as an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law. The Act specifically *excludes* the following situations when defining "law enforcement emergency":

(1) The perceived need for planning or other activities related to crowd control for general public safety projects; and,

(2) A situation requiring the enforcement of laws associated with scheduled public events, including political convention and sports events.

(b) *Federal law enforcement assistance.* The term *Federal law enforcement assistance* is defined by the Act to mean funds, equipment, training, intelligence information, and personnel.

(c) *Federal law enforcement community.* The term *Federal law enforcement community* is defined by the Act as the heads of the following departments or agencies:

- (1) Federal Bureau of Investigation;
 - (2) Drug Enforcement Administration;
 - (3) Criminal Division of the Department of Justice;
 - (4) Internal Revenue Service;
 - (5) Customs Service;
 - (6) Immigration and Naturalization Service;
 - (7) U.S. Marshals Service;
 - (8) National Park Service;
 - (9) U.S. Postal Service;
 - (10) Secret Service;
 - (11) U.S. Coast Guard;
 - (12) Bureau of Alcohol, Tobacco, and Firearms; and,
 - (13) Other Federal agencies with specific statutory authority to investigate violations of Federal criminal law.
- (d) *State.* The term *state* is defined by the Act as any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

Subpart I—Immigration Emergency Fund

SOURCE: Order No. 1892-94, 59 FR 30522, June 14, 1994, unless otherwise noted.

§ 65.80 General.

The regulations of this subpart set forth procedures for implementing section 404(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101 note, by providing for Presidential determinations of the existence of an immigration emergency, and for payments from the Immigration Emergency Fund to State and local governments for assistance provided in meet-

ing an immigration emergency. The regulations of this subpart also establish procedures by which the Attorney General may draw upon the Immigration Emergency Fund, without a Presidential determination that an immigration emergency exists, to provide funding to State and local governments for assistance provided as required by the Attorney General in certain specified circumstances.

§ 65.81 General definitions.

As used in this part:

Assistance means any actions taken by a State or local government directly relating to aiding the Attorney General in the administration of the immigration laws of the United States and in meeting urgent demands arising from the presence of aliens in the State or local government's jurisdiction, when such actions are taken to assist in meeting an immigration emergency or under any of the circumstances specified in section 404(b)(2)(A) of the INA. Assistance may include, but need not be limited to, the provision of large shelter facilities for the housing and screening of aliens, and, in connection with these activities, the provision of such basic necessities as food, water clothing, and health care.

Immigration emergency means an actual or imminent influx of aliens which either is of such magnitude or exhibits such other characteristics that effective administration of the immigration laws of the United States is beyond the existing capabilities of the Immigration and Naturalization Service ("INS") in the affected area or areas. Characteristics of an influx of aliens, other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Other circumstances means a situation that, as determined by the Attorney General, requires the resources of a State or local government to ensure

the proper administration of the immigration laws of the United States or to meet urgent demands arising from the presence of aliens in a State or local government's jurisdiction.

§ 65.82 Procedure for requesting a Presidential determination of an immigration emergency.

(a) The President may make a determination concerning the existence of an immigration emergency after review of a request from either the Attorney General of the United States or the chief executive of a State or local government. Such a request shall include a description of the facts believed to constitute an immigration emergency and the types of assistance needed to meet that emergency. Except when a request is made by the Attorney General, the requestor shall file the original application with the Office of the President and shall file copies of the application with the Attorney General and with the Commissioner of INS.

(b) If the President determines that an immigration emergency exists, the President shall certify that fact to the Judiciary Committees of the House of Representatives and of the Senate.

§ 65.83 Assistance required by the Attorney General.

The Attorney General may request assistance from a State or local government in the administration of the immigration laws of the United States, or in meeting urgent demands where the need for assistance arises because of the presence of aliens in that State or local jurisdiction, and may provide funding to a State or local government relating to such assistance from the Immigration Emergency Fund, without a Presidential determination of an immigration emergency, in any of the following circumstances:

(a) An INS district director certifies to the Commissioner of INS, who shall, in turn, certify to the Attorney General, that the number of asylum applications filed in that INS district during the relevant calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter. For purposes of this paragraph, providing parole at a point of entry in a district

shall be deemed to constitute an application for asylum in the district.

(b) The Attorney General determines that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of a State or locality.

(c) The Attorney General determines that there exist any other circumstances, as defined in § 65.81 of this subpart, such that it is appropriate to seek assistance from a State or local government in administering the immigration laws of the United States or in meeting urgent demands arising from the presence of aliens in a State or local jurisdiction.

§ 65.84 Procedures for the Attorney General seeking State or local assistance.

(a) When the Attorney General determines to seek assistance from a State or local government under § 65.83 of this subpart or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government, and shall set forth those terms and conditions. Funding related to such assistance can be provided by a reimbursement agreement, grant, or cooperative agreement.

(b) A reimbursement agreement shall contain the procedures under which the State or local government is to obtain reimbursement for its assistance. A reimbursement agreement shall include the title of the official to whom claims are to be submitted, the intervals at which claims are to be submitted, a description of the supporting documentation to be submitted, and any limitations on the total amount of reimbursement that will be provided. Grants and cooperative agreements shall be made and administered in accordance with the uniform procedures in part 66 of this title.

(c) In exigent circumstances, the Attorney General may agree to provide funding to a State or local government without a written agreement. A reimbursement agreement, grant, or cooperative agreement conforming to the specifications in this section shall be

reduced to writing as soon as practicable.

§65.85 Procedures for State or local governments applying for funding.

(a) In the event that the chief executive of a State or local government determines that any of the circumstances set forth in §65.83 of this subpart exists, he or she may pursue the procedures in this section to submit to the Attorney General an application for a reimbursement agreement, grant, or cooperative agreement as described in §65.84 of this subpart.

(b) The Department strongly encourages chief executives of States and local governments, if possible, to consult informally with the Attorney General and the Commissioner of INS prior to submitting a formal application. This informal consultation is intended to facilitate discussion of the nature of the assistance to be provided by the State or local government, the requirements of the Attorney General, if any, for such assistance, the costs associated with such assistance, and the Department's preliminary views on the appropriateness of the proposed funding.

(c) The chief executive of a State or local government shall submit an application in writing to the Attorney General, and shall file a copy with the Commissioner of INS. The application shall set forth in detail the following information:

- (1) The name of the jurisdiction requesting reimbursement;
- (2) All facts supporting the application;
- (3) The nature of the assistance which the State or local government has provided or will provide, as required by the Attorney General, for which funding is requested;
- (4) The dollar amount of the funding sought;
- (5) A justification for the amount of funding being sought;
- (6) The expected duration of the conditions requiring State or local assistance;
- (7) Information about whether funding is sought for past costs or for future costs;

(8) The name, address, and telephone number of a contact person from the requesting jurisdiction.

(d) If the Attorney General determines that the assistance for which funding is sought under paragraph (c) of this section is appropriate under the standards of this subpart, the Attorney General may enter into a reimbursement or cooperative agreement or may make a grant in the same manner as if the assistance had been requested by the Attorney General as described under §65.84 of this subpart.

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has expended the maximum amount authorized in section 404(b)(2)(B) of the INA. The Attorney General will make a decision with respect to any application submitted under this section, and containing the information described in paragraph (c) of this section, within 15 calendar days of receipt of such application.

(f) In exigent circumstances, the Attorney General may waive the requirements of this section concerning the form, contents, and order of consideration of applications, including the requirement in paragraph (c) of this section that applications be submitted in writing.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 66.1 Purpose and scope of this part.
- 66.2 Scope of subpart.
- 66.3 Definitions.
- 66.4 Applicability.
- 66.5 Effect on other issuances.
- 66.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 66.10 Forms for applying for grants.
- 66.11 State plans.
- 66.12 Special grant or subgrant conditions for "high-risk" grantees.